Joint Community Submission

Submission to the Parliamentary Joint Committee on Intelligence and Security Review of the listing of Hizb ut-Tahrir as a prohibited hate group under the Criminal Code

A joint submission by

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Executive Summary

This submission opposes the listing of Hizb ut-Tahrir as a prohibited hate group under the Criminal Code and invites the Committee to consider whether that listing should be disallowed, or whether the legislative framework itself requires substantial amendment before further use..

This review should not be treated as a narrow administrative check. It is one of the first substantive tests of whether Parliament will permit the executive to create and normalise a lower pathway for outlawing organisations in Australia. Hizb ut-Tahrir is the first organisation listed under this new framework. **This matters because first applications establish precedent. They shape how a regime is understood, how it is applied, and how far it is allowed to extend in future cases.**. The listing of **5 March 2026** activates serious criminal offences relating to membership, recruitment and funding, and therefore represents a significant shift in the consequences that may flow from executive designation.

This submission does not depend on agreement with Hizb ut-Tahrir. It is not necessary to share or defend an organisation's views in order to question the expansion of State power to prohibit on a lowered threshold. The concern addressed here is structural. It is directed to the framework and to the precedent created by its first use.

The Committee is not being asked to decide whether the organisation is unpopular, provocative, or politically objectionable. It is being asked to assess whether the listing should stand under the statutory framework Parliament has enacted, and whether the threshold, consequences, and precedent engaged by this first use of the regime are justified. Because this is the first use of the prohibited hate group framework, the Committee's task cannot sensibly stop at the identity of the organisation alone.

The concern lies in the architecture of the power. Under the framework described on the Committee's inquiry page, an organisation may be listed where the AFP Minister is satisfied on reasonable grounds that it has engaged in, prepared, planned or assisted conduct constituting a hate crime, or has advocated such conduct, and that listing is reasonably necessary to protect the Australian community or part of it from social, economic, psychological or physical harm, or from the promotion of violence. Once listed, offences under Division 114B are engaged, including offences relating to membership, recruitment and funding.

That framework extends beyond what many would understand as the traditional threshold for criminal prohibition. The Parliamentary Library's analysis identified several features that shape the present regime: reliance on pre-commencement conduct, absence of any requirement for conviction, and the express exclusion of procedural fairness in the formation of the Minister's state of satisfaction. It also noted the breadth of the harms relied upon and the significant criminal penalties that follow designation, together with the absence of automatic sunsetting.

Taken together, these features represent a material shift in how the state may move from disapproval of an organisation to criminal prohibition. They allow severe criminal

consequences to flow from executive designation under a framework shaped by broad and evaluative concepts such as social harm, psychological harm, promotion of violence, extremist rhetoric and social cohesion. These are not self-defining legal limits, and their application depends heavily on interpretation.

For that reason, this review has implications beyond a single organisation. It goes to the conditions under which Parliament is prepared to authorise prohibition, and the safeguards that must accompany such a power. Once established and normalised, a framework of this kind does not remain confined to its first application.

The Committee is therefore invited to consider whether this first use of the regime should be endorsed, whether it should be disallowed, or whether it should proceed only in conjunction with substantial legislative amendment to ensure that the threshold for prohibition remains clear, narrow, and consistent with fundamental principles of legal certainty, procedural fairness, and proportionality.

Recommendations

This submission recommends that the Committee:

1. Treat this review as a foundational test of the framework, not merely a review of one organisation.

Because this is the first use of the prohibited hate group regime, the Committee should assess not only whether the listing of Hizb ut-Tahrir can be sustained on the material before it, but whether the framework itself operates in a principled, proportionate, and legally coherent manner.

2. Consider whether disallowance is warranted in light of the breadth of the framework and the seriousness of the consequences that flow from designation.

In particular, the Committee should consider whether it is appropriate for severe criminal consequences to be activated by executive designation in circumstances where no conviction is required, procedural fairness is excluded, and the factual basis for designation is not disclosed in a way that allows meaningful public scrutiny or response.

3. Recommend urgent legislative amendment to narrow the statutory threshold for designation.

Any organisational listing power should be tied to clearly established serious unlawful conduct or direct incitement, rather than broad and evaluative concepts such as ideology, rhetoric, influence, social harm, psychological harm, or alleged risk to social cohesion.

4. Recommend amendment to require procedural fairness before listing.

The framework should require notice, an opportunity to respond, and a statement of reasons before designation, subject only to narrowly tailored limitations where genuinely necessary.

To the greatest extent possible, the evidentiary basis for designation should be disclosed in a form capable of meaningful testing and response.

5. Recommend the introduction of meaningful independent review.

Any organisational listing decision should be subject to timely and accessible independent review that goes beyond narrow judicial review and allows the merits of the designation to be tested in a meaningful way.

6. Recommend amendment to prohibit designation based solely on ideology, political belief, association, or perceived alignment.

An organisation should not be listed absent demonstrable unlawful conduct or direct incitement. The framework should not operate as a mechanism for prohibiting organisations on the basis of controversial, unpopular, or politically objectionable views alone.

7. Recommend amendment to prohibit reliance on past lawful conduct as a basis for designation.

The current framework allows pre-commencement and previously lawful conduct to acquire new legal significance. This undermines legal certainty and should be removed.

8. Recommend tighter limits on associative and downstream liability.

Consequences should not flow automatically from organisational designation to individuals through broad associative offences or through cascading consequences in other domains, including migration or visa outcomes, without independent and proportionate assessment.

9. Recommend the inclusion of sunset or periodic review mechanisms for any listing.

A regime of this seriousness should not continue indefinitely by default. Listings should either sunset automatically after a defined period or be subject to mandatory periodic parliamentary and independent review.

10. Recommend explicit statutory protection for lawful political advocacy, lawful religious expression, and lawful association.

The framework should make clear that criticism of states, governments, or political ideologies, and legitimate religious teaching, interpretation, and ethical reasoning, do not of themselves constitute a basis for organisational prohibition. Particular care should be taken to preserve the distinction between critique of conduct or ideology and hostility toward protected groups of people.

1. Scope and Positioning

This submission is not an endorsement of the views, rhetoric, or conduct attributed to Hizb ut-Tahrir.

The Committee is being asked to review the first use of a new and far-reaching legislative framework that enables the executive government to designate organisations as prohibited hate groups, with serious criminal consequences flowing from that designation.

In that context, this submission focuses on the structure and operation of the framework itself, rather than attempting to adjudicate the factual basis relied upon by the Minister. The evidentiary material underpinning the listing has not been disclosed in a form capable of meaningful public scrutiny or response. That limitation is, in fact, central to the Committee's task.

The question before the Committee is not only whether the listing can be supported on the material available to government, but whether the framework permits designation in a manner that is principled, proportionate, and consistent with fundamental rule of law safeguards, including legal certainty, procedural fairness, and meaningful accountability.

This is particularly significant because this first listing will set the practical precedent for how the regime is applied in future cases. The Committee's approach in this instance will shape the operation of the framework beyond this specific designation.

2. This review is about the legislative framework, not only the subject of designation

This review is not limited to the subject of designation, Hizb ut-Tahrir. It concerns the operation of a new and far-reaching statutory framework enacted by the Commonwealth.

The easiest mistake in this inquiry would be to start and end with the name of the designated group. That would be a mistake, because governments often introduce extraordinary powers by attaching them to a target that already attracts strong public hostility. The target absorbs the heat, while the precedent survives the moment.

That is why the Committee must be exacting here. A state power should not become acceptable merely because the first organisation chosen for its use is one many people dislike. Law made at the point of maximum political hostility is precisely the kind of law that requires the greatest parliamentary scrutiny.

The broader principle is simple. A prohibition power justified by one group today becomes a reusable instrument tomorrow. It does not expire when public attention moves on. It remains available for later governments, later ministers, later agencies, and later political climates. That is especially true where the legal threshold turns not on criminal conviction or completed serious violence, but on executive satisfaction as to advocacy, social harm, psychological harm, extremist rhetoric, or threats to cohesion.

The concern is therefore structural. The Committee should examine not only whether there is sufficient material to sustain this listing, but also what kind of legal architecture Parliament is building if it endorses this form of prohibition. A committee charged with intelligence and security oversight should know better than most that powers introduced under urgent moral language seldom remain narrow in practice. They expand by interpretation, institutional habit, public fear, and political convenience (Ananian-Welsh & Williams, 2014; Hardy & Williams, 2022).

This is particularly significant because this is the first use of the prohibited hate group regime. The Committee's approach in this case will shape how the framework is understood and applied in future cases, well beyond the present designation.

3. The framework lowers the threshold for prohibition

This submission is grounded in a basic proposition: the prohibited hate group regime lowers the practical threshold at which the Commonwealth may move from condemnation to criminal prohibition.

That point is not merely inferred, it has been publicly acknowledged by the government. In defending the creation of the new regime, Minister Burke said the new listing power was intended to cover groups that did not currently meet the bar for listing as terrorist organisations (Butler, 2026), and specifically said Hizb ut-Tahrir and the National Socialist Network had "gone right to the limits of the law" while avoiding prosecution. ABC likewise reported Burke saying the new legal regime was established to capture groups deemed to spread hate but not captured by existing laws. That matters because it makes the shift in legal threshold explicit. The issue here is not that hidden criminal conduct was uncovered and then acted upon under the old standard. The issue is that a new pathway was created to prohibit organisations that had previously been operating without crossing the older legal threshold.

Under the older terrorism framework, the public and legal imagination are shaped by a recognisable threshold involving terrorism, preparation, support, organisational connection and associated criminal conduct. The present framework is different. It uses the category of prohibited hate group, tied to hate crime and advocacy of hate crime, together with a necessity test framed by protection from **social, economic, psychological or physical harm, or from the promotion of violence**. That is a different threshold and a broader field of judgment (Australian National Security, 2025; McGarrity & Williams, 2018; Parliament of Australia, Parliamentary Library, 2026).

The Parliamentary Library's official analysis of the legislation made clear how consequential this shift is. It described new Part 5.3B as a "significant new Part", explained that listing may occur where the minister is satisfied on reasonable grounds, and drew attention to the breadth of the identified harms that ground the regime. It also observed that those harms are "strikingly broad", given the serious implications of designation. That observation should not be brushed aside. It goes to the heart of this inquiry. When criminal consequences of this magnitude are triggered by executive designation, the legal criteria must be narrow, stable

and exact. Broad categories of social or psychological harm do not meet that standard (McGarrity & Williams, 2018; Parliament of Australia, Parliamentary Library, 2026).

The same is true of language such as “normalise extremist rhetoric” and “risk social cohesion.” Such phrases are politically forceful but legally unstable. They invite state institutions to move from punishing conduct to policing narratives, from proving criminality to interpreting speech climates, and from prosecuting specific wrongdoing to disabling entire organisations. The Committee should be extremely reluctant to validate a prohibition power that rests so heavily on contestable assessments of rhetoric, influence and perceived harm.

4. Executive satisfaction cannot be a substitute for due restraint

The Executive is not entitled to short-circuit basic restraint simply because the cause is popular. Yet the present scheme permits serious consequences to flow from ministerial satisfaction in a context where the Parliamentary Library specifically noted three deeply troubling features: past conduct before commencement may be relied upon, conviction is not required, and procedural fairness is not required in forming the minister’s state of satisfaction.

Each of these is serious on its own. Together, they create a framework in which the executive may rely on historical material, untested allegations or assessments, and a process expressly relieved of procedural fairness, and then trigger a criminal regime that reaches members, recruiters, trainers and those dealing with funds.

The practical effect of broad and obscure security powers is not hypothetical. An earlier parliamentary review recorded evidence from Muslim organisations and community legal centres that anti-terror laws had generated fear, discouraged attendance at public legal education forums, created reluctance to engage in anything seen as political, and caused anxiety that ordinary practices such as charitable giving or contact with family overseas could attract scrutiny. The Committee at that time accepted that a climate of fear did exist in the Muslim community and linked that fear to the expansiveness of the powers under review (Lynch & McGarrity, 2008; Parliamentary Joint Committee on ASIO, ASIS and DSD, 2005).

That should concern any committee serious about constitutional culture, not only civil liberties. It means that the burden of state judgment is shifted away from open adjudication and toward executive assessment. It means an organisation can be treated as criminally dangerous before the ordinary disciplines associated with proving serious wrongdoing have done their work. It means the state can convert suspicion, interpretation and ministerial satisfaction into a legal status that exposes others to prosecution.

The Committee should not accept that lightly. A legislative framework that bypasses procedural fairness at the designation stage while attaching heavy criminal consequences to designation is not simply acting firmly. It is acting asymmetrically. It is claiming the benefit of criminal consequences without the discipline ordinarily associated with criminal proof and process.

5. This power does not end with Hizb ut-Tahrir

This point should be stated plainly. The ban on Hizb ut-Tahrir does not stop with Hizb ut-Tahrir. The Committee's own inquiry page confirms that this listing enlivens offences for membership, recruitment and fundraising. The Parliamentary Library's analysis makes clear that the offence suite is even broader, extending to directing activities, training with or providing training to the organisation, receiving or providing funds, and carrying penalties ranging from 7 to 15 years. That is a substantial criminalisation framework.

Once a government demonstrates that this power can be used successfully, the next question will not be whether the power should exist. The next question will be who else might be brought within it. That is how legal normalisation occurs. The most controversial step is often the first. After that, the debate shifts from principle to administration.

This is why minority communities, and politically exposed constituencies, may reasonably read this development with concern. In practice, not all organisations are interpreted equally by national security institutions or political actors. Some are read charitably, while others are read more suspiciously. Some are afforded greater latitude to be strident, ideological or morally absolute. Others may be treated as potential security concerns once their language becomes uncompromising. When broad prohibitory powers exist, those asymmetries matter.

Muslim organisations, Palestine solidarity advocacy networks, and organisations that engage in robust political advocacy are entitled to ask whether this framework creates a reusable legal instrument that can later be turned toward groups that are lawful but politically disfavoured. This concern is not speculative but reflects how precedent operates and how executive power accumulates over time. Legal categories tend to expand once Parliament signals that broad preventive logic is an acceptable basis for prohibition.

This is particularly significant in the present context, where the threshold for designation does not depend on conviction and is shaped by evaluative judgments about rhetoric, influence, and harm.

6. Social cohesion is too vague a basis for criminal prohibition

The concept of social cohesion is frequently invoked in contemporary public life, but it often remains underdefined in legal and policy terms. It is often invoked whenever governments seek to frame controversy, sharp criticism, or social tension as matters of risk requiring intervention. In such contexts, it can function as a vocabulary that sounds protective without being sufficiently precise.. **That is not, without much clearer definition and constraint, a proper foundation for outlawing organisations.**

A democratic society does not preserve cohesion by collapsing the distinction between objectionable speech and criminal prohibition. It preserves cohesion by maintaining principled boundaries, punishing actual crimes, protecting equal rights, and ensuring that

broad social concepts are not used to justify coercive power against politically or socially disfavoured groups.

The Committee's media release stated that Parliament has established a framework so organisations that promote hatred, normalise extremist rhetoric and risk social cohesion are subject to strong legal consequences. That formulation should give the Committee pause. A legal regime grounded in such broad and impressionistic concepts risks overreach. It encourages decision makers to focus not only what was done, but how a group's rhetoric is perceived and what broader social effects it is said to produce. That is too malleable a basis for criminal designation.

The Committee should resist any attempt to turn cohesion into a catch-all rationale for coercive executive, or legal, power. Cohesion is not strengthened when governments enlarge executive mechanisms that may be applied unevenly, without procedural fairness, and in ways that deepen distrust among already scrutinised communities. A prohibition regime of this kind may satisfy immediate political demands but it may also corrode confidence in equal treatment under law. Where social cohesion is relied upon as part of the justification for criminal prohibition, the relevant criteria should be especially clear, narrow, and resistant to subjective or politicised application.

7.. Parliament's human rights scrutiny should not be ignored

It is also significant that the Parliamentary Joint Committee on Human Rights, in its April 2026 scrutiny update, stated that the instrument designating Hizb ut-Tahrir as a prohibited hate group led it to reiterate its previous human rights concerns regarding the prohibited hate group offences.. That is a significant parliamentary concern directed to this very instrument.. The committee noted that the new offences and associated powers would engage and may limit multiple human rights, including children's rights and the rights to equality and non-discrimination, fair trial, freedom of association, freedom of expression and liberty.

A committee such as this one should not treat that as a matter to be noted and set aside.. It should ask why Parliament's human rights scrutiny body is still repeating concerns at the very moment the first designation under the regime is being reviewed. It should ask whether those concerns go to the architecture of the scheme, not merely to edge cases. It should ask whether the combination of broad criteria, limited process protections and severe criminal consequences is precisely what generates those unresolved concerns.

Where one parliamentary committee is told that another has already raised rights concerns about the instrument before it, the proper response is not mere institutional acknowledgement, but serious scrutiny.

The point is that Parliament's own human rights scrutiny body has already raised concerns about this regime, which suggests the problem may lie in the framework itself, rather than only in its application at the margins. That should weigh heavily in any assessment of

whether this first use of the regime ought to be endorsed, disallowed, or treated as requiring urgent legislative amendment.

8. What the Committee should recommend

For all of these reasons the Committee should give serious consideration to recommending disallowance of the listing, particularly given that this is the first use of the framework and the precedent that will follow from it.

That would not amount to approving the organisation's ideology. It would not prevent the state from prosecuting actual criminal conduct. It would not immunise unlawful incitement, unlawful threats, unlawful fundraising, or other specific offences already available in Commonwealth and state law. What it would do is draw a principled line against the use of this new and lowered prohibitory framework in its current form.

If the Committee is not prepared to recommend disallowance, it should, at the very least, recommend substantial legislative amendments before this regime is further normalised. At a minimum, the framework should be amended to narrow the statutory threshold, require procedural fairness, prohibit reliance on past lawful conduct, introduce meaningful independent review, and provide sunset or periodic review mechanisms for any listing. The present framework is too broad, too dependent on executive satisfaction, too weak on procedural fairness, too open to historical and untested material, and too consequential in its criminal effects to be accepted without major reform.

A recommendation framed in these terms would allow the Committee to discharge its scrutiny function without collapsing the distinction between concern about an organisation and endorsement of an overbroad legislative mechanism.

9. Conclusion

This review should be approached with a seriousness commensurate with the power it examines. First listings matter. They establish the habits that make later listings easier. They indicate what Parliament is prepared to tolerate. They show agencies how far broad concepts can be pushed before meaningful resistance appears.

The question before the Committee is not whether Hizb ut-Tahrir is offensive enough to make prohibition feel politically satisfying. The question is whether Parliament should endorse a framework that lowers the threshold for outlawing organisations and places severe criminal consequences behind executive designation.

A democracy should be most careful when it is most tempted to be least careful. It should hold the line precisely when the target is unpopular. It should insist that criminal prohibition remains tied to rigorous standards, fair process, and genuine legal restraint.

For the reasons set out above, the Committee should give serious consideration to recommending that the listing of Hizb ut-Tahrir as a prohibited hate group be disallowed. If it is not prepared to do so, it should at minimum recommend substantial legislative amendment before this framework is further normalised.

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